IN THE SUPERIOR COURT FOR THE COUNTY OF WALTON
STATE OF GEORGIA

LATOYA SUMMEROUR,	)	
	)	
MAHLON E. SUMMEROUR,	)	
	)	
PLAINTIFF,	)	CASE NO. 2020-SU-CV-1483-2
	)	
vs.	)	
	)	
CITY OF MONROE,	)	
	)	
SAM HARRISON,	)	
	)	
DEFENDANT.	)	

TRANSCRIPT OF CIVIL PROCEEDINGS
BEFORE THE HONORABLE JOHN M. OTT
SUPERIOR COURT JUDGE
THURSDAY, MARCH 25th, 2021

APPEARANCES OF COUNSEL:

ON BEHALF OF THE PLAINTIFF:
CRAIG JONES, ESQ.
ATTORNEY-AT-LAW
3313 PACES FERRY AVENUE
ATLANTA, GA 30339

ON BEHALF OF DEFENDANT:
SARA BROCHSTEIN, ESQ.
ATTORNEY-AT-LAW
100 GALLERIA PARKWAY, STE 1600
ATLANTA, GA 30339

Judy L. Yeager, CCR
Official Court Reporter - Alcovy Judicial Circuit
Post Office Box 1104, Covington, GA 30015
jly8833@gmail.com
770-883-8833

THE COURT: Let'S go now to the case of Latoya Summerour and Mahlon Summerour versus the City of Monroe and Sam Harrison.

MS. BROCHSTEIN: Good morning, your Honor, Sara Brachstein on behalf of the defendants, City of Monroe and Lieutenant Sam Harrison.

We are here today on the defendant's motion for judgment on the pleadings. We also have a motion to stay discovery while the Court considers that -- the motion for judgment on the pleadings.

Would the Court like a brief summary of the facts?

THE COURT: You can. That is fine.

MS. BROCHSTEIN: Okay. So essentially this is a case where -- involving a police response to an emergency call regarding a man with a gun. Lieutenant Harrison and another officer respond to the call.

The other officer is wearing a body cam, so the incident is recorded on videotape. The videotape shows that Lieutenant Harrison approaches the man, tries to de-escalate the situation and speak with him. He tries to take the gun. Mr. Summerour at that time is holding the gun up, so Lieutenant Harrison tries to take it, pulls it out --

THE COURT: Is this the facsimile of an AK-47 or an automatic rifle or is it --

MS. BROCHSTEIN: I think it's some sort of rifle, automatic weapon, but don't quote me. It's a rifle.

THE COURT: It's not a handgun.

MS. BROCHSTEIN: It's not a handgun, yes.

THE COURT: Okay.

MS. BROCHSTEIN: So the video shows in a matter of seconds essentially that the gun goes from being pointed up to swung around -- I think general, but swung around towards Lieutenant Harrison.

The video shows both officers visibly react. They both pull their service weapons. The one who I think is recording on the body cam yells hey, or something like that and Lieutenant Harrison issues one shot, which strikes Mr. Summerour in his front and unfortunately, Mr. Summerour later succumbed to his injuries and passed away at the hospital.

So those are the facts as demonstrated in the complainant and on the video. So I think the first thing that was raised in the motion -- or plaintiff's response is whether this videotape footage can be considered at the pleading stage.

We originally filed the motion as a 911-12(c)

motion, motion for judgment on the pleadings. We outlined that standard I think pretty succinctly for the Court in our reply brief, but essentially a motion for judgment on the pleadings is the pleadings, not just the complaint.

The Georgia Civil Practice Act is clear that an answer is included in what is considered a pleading. The statute says that exhibits can be attached to pleadings and are considered a part of the pleadings for that purpose.

We also cited to a Georgia Supreme Court case, Trop, I think, T-R-O-P, Incorporated vs. City of Brookhaven, where the Court said consideration of exhibits attached the answer did not convert the defendant's motion for judgment on the pleadings into a motion for summary judgment.

So not only -- we have the videotape attached to the answer. We also included a copy of the City's insurance policy as an exhibit, given plaintiff's assertion that the City has waiver sovereign immunity, which I will come to, and then attached to our motion we included the District Court's order from the Federal case the plaintiff had brought and the Federal claim against Lieutenant Harrison has already been dismissed.

So we would argue that all of these things can be considered at the pleading stage under a 12(c) motion; however, if the Court disagrees and is inclined to agree with plaintiff's position, then we would argue the proper approach to consider the pending motion as one as a motion to dismiss for lack of subject matter jurisdiction under 12(b)1, which also allows exhibits to be considered by the Court that are not necessarily part of the pleadings, and that's because it's more of a plea in abatement. It's not an adjudication on the merits since we are looking into issues such as immunity, which will be decided before the merits of the case. They are threshold issues.

And we have cited -- I am happy to go through it, but there is plenty of authority that talks about how evidence can be considered beyond the face of the complaint under these 12(b)1 motions.

In my practice we see it the most with ante litem notices. It's a statutory immunity and the Court can consider an ante litem notice attached to a motion to dismiss at the (b)1 stage.

So regardless of which avenue the Court prefers to consider, whether it's under 9-11-12(c)or 911-12-(b)1, these exhibits should be considered and the

Court is capable of considering them.

And I think under the 12(c) the statute says something about written instruments and what I found when I was researching, the most common context is a contract and so this makes sense that the Court can consider it now.

The document says what it says. We may argue about the legal implications of what that insurance policy holds, or we may argue about whether or not the video can be considered. We may argue about whether the District Court, the order has any relevance to the collateral estoppel issues, but those documents and that video they say what they say, they show what they show, and that is not disputable.

So, again, regardless of which section of 9-11-12 we want to come under, the Court can consider these exhibits.

So to start, I want to address official immunity for Lieutenant Harrison. This is a question of law to be decided by the Court, and under the Doctrine of Official Immunity there's really two ways plaintiff can overcome a public officer's entitlement to this immunity.

One is through a negligent performance of a

ministerial duty. I don't think there is any allegation here that Lieutenant Harrison --

THE COURT: You are talking about qualified immunity, not the sovereign immunity in the sense of sovereign immunity where the government can't be sued, but an individual officer might be sued under qualified immunity through the negligence, and I forget -- it always slips my mind.

There are two ways of qualified immunity. One is negligence -- one is ministerial and one is -- what is the other one?

MS. BROCHSTEIN: Discretionary.

THE COURT: Discretionary.

MS. BROCHSTEIN: Yes, your Honor. So I --

THE COURT: Ministerial is attached to a duty that he does routinely. If it is under that he gets qualified immunity. If he is outside the scope of that, then he would not get the immunity.

The discretionary is the negligence you are talking about, if he is doing something negligently. I don't think I'm confused, but that is basically -- that is totally -- that is for the individual --

MS. BROCHSTEIN: Correct.

THE COURT: -- not for the government, which is sovereign immunity.

MS. BROCHSTEIN: Correct. I can start with sovereign immunity if you would prefer.

THE COURT: I don't really care.

MS. BROCHSTEIN: Okay.

THE COURT: I had to study all of this in a case I was handling down in Newton County is the only reason -- and we see how quickly it leaves from my mind.

MS. BROCHSTEIN: It can quickly, your Honor.

THE COURT: Go ahead with whatever you want to say.

MS. BROCHSTEIN: Okay. And, yes, your Honor, so in Georgia case law they interchangeably refer to it as official or qualified immunity. It's the state law immunity for officials, not the City, like you said.

So there's discretionary acts and there are ministerial acts. Ministerial duty has to be something where you had a very clear directive, you had to follow it.

The case law we cited to shows, you know, responding to an emergency call and considering whether or not to use use of force. Those are discretionary acts, so that's the analysis we provided the Court. I won't focus on the

ministerial unless plaintiff wants to make that argument.

So with discretionary the standard is actual malice. The plaintiff will have to show that Lieutenant Harrison had actual malice in his actions towards Mr. Summerour.

This is a high standard. It's not negligence. It's not gross negligence. It's not even reckless conduct. You have to show that he had an intent to do a wrong doing.

Now, this is somewhat of an interesting presentation because there was a use of deadly force, so the Supreme Court in, I think it's Kidd v. Coates, said that essentially showing that the officer was acting in self-defense will serve to overcome this actual malice standard, and the officer would be entitled to official immunity.

So we have to look to what Georgia considers justified shooting and acting in self-defense, and I think plaintiffs cited it, but essentially under 16-3-21 a person is justified in using force which is intended or likely to cause death or great bodily harm only if he or she reasonably believed that such force is necessary to prevent death or grave bodily injury to himself or a third person.

So when considering this video it's very clear. He acts in self-defense. There is really not another option. The whole thing happens in a matter of seconds. He is confronted with a gun that he believes to be real. You can tell on the video both officers believe it to be real.

I think there is a mention of another angle, perhaps and that's what discovery is necessary for, but this isn't a video where someone's body who is involved is not in the frame. It's a dead-on view of what happens.

I find it hard to believe there is going -- I mean, the argument is he's turning this way with a gun towards the officer. I can't fathom a view on another video that shows him turning the other way.

Furthermore, based on where he's shot it would be difficult to say he wasn't turned towards the officer.

So for the self-defense, essentially the shooting is justified if he's acting in self-defense. We have that standard that's a reasonable belief that that force was necessary. I think the Court can make that determination based on the video evidence.

And frankly, again, I can't see how any

discovery will serve to overcome the video; however, if the Court is inclined to allow plaintiff to explore this issue in discovery, we would ask that it be a limited discovery period only to this issue of actual malice and official immunity, because to go through a full-fledged period of discovery where we are having to get experts and do full depositions, it essentially eviscerates the immunity -- the purpose of the immunity in the first place, which is to be immune from suit in a case where they're entitled to official immunity.

I don't believe with respect of any of the exhibits -- my understanding is the argument is that they cannot be considered at this time and the plaintiff wants to move forward with discovery.

I am not under the impression plaintiff is making the argument that any of these are not authentic or have some sort of issue, but if that is the case, we are happy to provide any additional authenticity testimony, affidavits, whatever is necessary, but that's not my understanding of what the issue is.

So this case is also a little unique, in that the self-defense argument that comes up for official immunity would also sort of be the same standard

under the merits, so we have that merits argument as well as likely to failed to state a claim.

Ultimately I don't think that reasonable minds differ as to what the video shows and I don't think a jury could conclude that he was not acting in self-defense.

That's our position. That was also the District Court's position. We raised no collateral estoppel argument, which I will come to, but frankly you could view it independently and assess that without relying on the District Court's opinion as well.

So that's what I had on official immunity and I will move on to sovereign immunity unless you had any questions for me.

THE COURT: I don't have any questions.

MS. BROCHSTEIN: Okay. So sovereign immunity, in the complaint plaintiff alleged the City is vicariously liable for Lieutenant Harrison's actions. O.C.G.A. 36-33-3 says a City shall not be liable for the torts of policemen engaged in the discharge of their duties.

There is case law that says this is an extension of sovereign immunity and can be waived to the point that the City has purchased liability insurance that would cover this occurrence.

We argue about -- again, I don't see any reason why the insurance policy can't be considered either under 12(c) or 12(b)1. There is no discovery necessary as to the policy. It says what it says. We are arguing over whether it can serve to waive sovereign immunity or not, but that's a legal determination for the Court to make.

So for sovereign immunity there is a case directly on point, Gatto vs the City of Statesboro. It was ruled on by the Supreme Court recently and the Georgia Supreme Court has granted CERT, but one, I don't think that the issue they've granted CERT on -- necessarily touches on what we've presented, that our endorsement does not serve to waive sovereign immunity: and then, two, just because the Court has granted CERT does not change the Court of Appeals opinion. As of right now that Gatto vs. the City of Statesboro is on point. It's good law. It's instructive as to the facts in this case and why the City has not waived it's sovereign immunity.

And then finally I will come to the collateral estoppel issue. So, like I said, the plaintiff originally filed suit in the Federal court in the Middle District. The judge there ruled on the Federal claim of excessive force and declined to

exercise supplemental jurisdiction over the state law claims, which is how we are here.

But in ruling on the Federal law claims the Court made some findings as a matter of law that should be precluded from being re-litigated at this time. They were necessary to the judge's decision. All of the parties were the same.

It meets all of the requisites for collateral estoppel, namely that Lieutenant Harrison, faced with circumstances he was faced with, had a reasonable belief that deadly force was necessary.

So we would argue that the District Court's opinion can be considered and would serve to estop arguing that Lieutenant Harrison did not act reasonably, which, again, would take out any merits argument from plaintiff, and again, leave us with a failure to state a claim.

Thank you, your Honor.

THE COURT: Okay. Mr. Jones?

MR. JONES: Thank you, your Honor. She gave me a lot of rabbits to chase, so I am probably going to take a little longer than I expected.

Is this Lieutenant Harrison?

MR. ROSEHTHAL: No.

MR. JONES: Okay, I'm sorry, I didn't know. I'm

Craig Jones and I represent the daughter and the estate of Mr. Summerour, and I hate to be a stickler for the rules, but we are here on a motion for judgment on the pleadings, which is -- other than the timing of the motion, is the same issue as a motion to dismiss. You know, depends upon whether the pleadings are closed, whether an answer has been filed or not as to which you file.

But the standard is the same, and so the Court's ruling on either a motion to dismiss or a motion for judgment of pleadings must be based on the pleadings only.

Now, the Court can -- the Court has the option, as you know, to consider material beyond the pleadings, but if you do then that converts it into a motion for summary judgment, which in our view can't be decided based on one piece of evidence considered in isolation without giving both sides an opportunity to do discovery, number one, to challenge that evidence; number two, discover additional evidence; and number three, to give the Court a complete record to rule on.

The pleadings in this case, I don't think she intended to say this, but she did, I think, mis-characterize what is alleged in this case.

We never alleged in the pleadings that Mr. Summerour pointed a gun at anybody. The pleadings alleged, and of course, we believe a jury could tell from looking at the video -- we already have an expert who has looked at the video. We are just under no obligation to disclose any of that because they haven't allowed us to do discovery yet, and we are fine, incidentally, with staying discovery until you rule on this motion, but we believe discovery is necessary in order to reach the merits of the case.

THE COURT: Was this film made public to the news media?

MR. JONES: I think so.

THE COURT: Because I think I have already seen the whole film up to the actual shooting itself.

MR. JONES: Yeah, I think so. But we have not -- there has not been any discovery yet in either the Federal court or this court. You know, Federal court operates a little differently. They file a motion to dismiss. They don't even have to file an answer and the Federal courts will rule on legal issues before discovery takes place, if it's something that can be decided as a matter of law without a factual record.

THE COURT: I guess what I am saying, as I have

already said earlier, I am a very simplistic judge in a simplistic court.

MR. JONES: Yeah.

THE COURT: I have already seen something. I don't know what the plaintiffs would be arguing as to why this would not be a justified shooting from what I have already observed just on this video. She says, well, he might make an argument that another angle might show that he was pulling away the other way.

MR. JONES: True.

THE COURT: So the exists out there?

MR. JONES: Absolutely.

THE COURT: And you have got that video that shows that he is not pointing toward the officers, that he is pointing at a different direction?

MR. JONES: No, we have a -- we have the same video. We have different interpretations of the same video, and the video is not in -- it is not in the pleadings, it is not referenced in the pleadings. It would be improper to rule on that on a motion for judgment on the pleadings. If you convert it to a summary judgment --

THE COURT: Would that be elevating form over substance?

MR. JONES: No, it would not be, because --

THE COURT: You say, well, the form means you can't look at it, Judge, or consider it, Judge. Substance is, yeah, if I look at I can tell right away.

MR. JONES: Well, you can look at it as long as --

THE COURT: And you are saying, well, no, Judge, you can't look at that, you can't do that, --

MR. JONES: Well, you can --

THE COURT: -- because the form -- I am telling you we will allow it.

MR. JONES: Well, the form requires us to have due process before we make final decisions and that's who we are as a business society as a nation.

But what I would say is that -- I mean, if you want to talk about this, obviously you want to consider information beyond the pleadings. If you do that, then you have to allow discovery to fully develop the evidence so that you're relying upon a --

THE COURT: What do you mean fully develop the evidence?

MR. JONES: Well, first of all, if you convert it to a motion for summary judgment, you are

required to view the evidence in the light most favorable to the plaintiff as a non-moving party. That would include, one, the plaintiff's interpretation of the video; number two, expert testimony about whether the officer acted appropriately or not; and number three, if would include doing discovery of other evidence.

But if you want to talk about the video --

THE COURT: Let me stop you right there.

MR. JONES: Yes, sir.

THE COURT: I don't know the length of time that this incident took place actually on this video. Does anybody have a time from the start to the shot of what took place and the timing?

MR. JONES: Less than a minute. I guess it depends upon where you start the timing.

THE COURT: We'll say a minute.

MR. JONES: But --

THE COURT: Let's say a minute.

MR. JONES: Yeah.

THE COURT: You talk about experts to look at it. Well, those are your experts. They can look all day long.

MR. JONES: Sure and they get their experts as well.

THE COURT: They may not even need experts. The thing speaks for itself.

MR. JONES: Now, let me tell you what it speaks to me.

THE COURT: And you can't have an expert that supplants the fact finding of the jury by making their own opinion about something, and we come perilously close to that when you start talking about, well, an expert is going to take the stand and say that the officer acted appropriately.

I don't know that an expert can make that decision. They can talk about standards of police all day long. They can't talk specifically about this case and say, as I view this video I am finding as an expert that the officer did not do so and so, because that, again, encroaches upon the jury's fact-finding function, as we all know.

MR. JONES: Well, first of all, what jury? We have got to have a jury first and we have got to have facts for them to find.

THE COURT: I am talking about the fact of the discovery and the extent of discovery. You keep talking about, well, there will be all these experts. Well, you have got the ability to get those experts and it doesn't even encroach upon --

and, as I have said, the plaintiffs don't even have to get any experts.

I am trying to figure out what discovery there is of something that occurred that we can all see within one minute.

The fact finder can look at it and make their own determination and whether it is outside the kin or the knowledge of the juror would only be why you would have an expert to come in, because a juror could not make a factual determination. It was outside of his, such as had to get lab technicians to come in and talk about drug analysis that the jurors don't have any earthly idea, know about the drug analysis.

This is going to be a simple did this officer act appropriately within his duty in this one-minute span that we all can see when he was approached by -- did he act reasonably and was he justified in shooting.

MR. JONES: Well, let me make a proffer then --

THE COURT: I am telling you right now it is not outside the kin of the jury. They can see it. They can be read the law on justification and they can make their own determination.

MR. JONES: Yes. Well, let me -- let me go

ahead and break it down then. The video shows an officer approaching -- I hate to turn my back to you, but he is facing Mr. Summerour. He is asking to see the gun. There's another officer over here (indicating).

The officer -- I'm sorry, Mr. Summerour at some point turns away from the officer. Let me get it right. The officer is there. He is like this (indicating). He is holding the gun in the air. At no point is he ever pointing it at anyone. He turns around and starts to walk away.

Their argument is that looking at the video, not from the vantage point of the officer who shot, but from the vantage point of the other officer, who didn't see a sufficient threat to shoot. If you look at the video and you Rodney King the video and you slow it down frame by frame, you can make an argument that while he is turning around to walk away the officer who shoots thinks that maybe he is pointing the gun at this guy over here, who doesn't shoot, and so that is a matter of interpretation by the jury.

THE COURT: Well, let me stop you for a second.

MR. JONES: Now, that's one point out of many.

THE COURT: Stop. Physical evidence. Where did

the bullet enter Mr. Summerour's body?

MR. JONES: I think it was in his side as he was turning.

THE COURT: Was it the side?

MR. JONES: I think so.

THE COURT: Well, an autopsy report is going to show that.

MR. JONES: Yeah, absolutely, but that is not in evidence yet, and I think we are bound by the pleadings at this point.

THE COURT: Listen to me for a second.

MR. JONES: Yes.

THE COURT: I have said all along this Court is interested in the truth and the straight-forwardness. I am interested in the substance more so than the form.

If everybody has got this autopsy report and everybody knows exactly where that bullet entered, and I just asked the question where did that bullet enter and you say, well, I think it entered the side, well, that is a known fact that you have said.

If the defense agrees with that -- because I thought the defense in their argument to me said the bullet entered into the front, which goes contrary to what your assertion is to the side.

MR. JONES: I said it was my belief. I'm not sure, but he could have his back and the guy pointing a gun at him. That wound does not --

THE COURT: Counselor, no. Your whole argument to me was that the gun wasn't being pointed at anybody. He was sideways to the person and an officer just shot --

MR. JONES: Yes.

THE COURT: -- so that it would have had to go into his side by that officer because he wasn't facing any officer and he wasn't pointing the gun at any officer, and I am simply telling you the defense had told me that the shot went into his front.

I tried a murder case a long time ago when I was an assistant district attorney with the same kind of allegation from a defendant was that the person was sideways to that -- no, was facing front to that defendant and when shot, and yet the physical evidence showed that was not true, the shot had come in on the side and cut across the body and not front to back.

Now, I am just asking a simple question.

MR. JONES: And I simply said I am not certain. I believe it was a side. I have a couple of dozen of these cases, your Honor, and I am not certain.

THE COURT: I am not asking -- I keep looking at the defense table to see. Have y'all got an autopsy report?

MS. BROCHSTEIN: I don't, your Honor, and I took it off of the pleadings. The complaint says that -- in paragraph 16 and it's also in plaintiff's motion response that it struck him in the chest.

MR. JONES: Okay. He was shot in the chest as he was turning.

MS. BROCHSTEIN: It's on the video, and I apologize, I don't want to misspeak where I took the allegation from the chest and when I recall watching the video it was in the front.

THE COURT: Let me just make a simple statement.

MR. JONES: Well, I don't know what the objection was.

THE COURT: Let me make a simple statement for everybody.

MR. JONES: Yes.

THE COURT: I am kind of surprised that I know an autopsy would have had to have informed -- been performed by a crime lab on an officer shooting like this. Why don't all y'all have that?

MR. JONES: We have it, your Honor, but we are here on a motion at the pleading stage.

THE COURT: I am talking to the defense.

MR. JONES: I'm sorry.

THE COURT: Surely you have got a massive file with all the evidence in it.

MS. BROCHSTEIN: I think we said something to the G.B.I., so we may have it. I was taking it based on the pleadings.

THE COURT: Go ahead, let's finish with your argument.

MR. JONES: Okay. Another point would be that our expert, who has been in law enforcement for over 30 years, has been involved in his own officer involved shootings, who has trained officers, who has been a professor, who has written textbooks on this stuff, says that he is someone familiar with firearms and any reasonable officer who is familiar with firearms would have immediately recognized that this was not a real gun. It was flimsy wooden -- small wooden thing that the guy's waiving freely in the air.

THE COURT: It was not a facsimile of a gun?

MR. JONES: No, it was a -- it was a model -- more like a stage prop that you would use in a school play or something, but it was --

THE COURT: Of a gun or a rifle?

MR. JONES: Of a Tommy gun, a Thompson submachine gun. It's smaller. It's lighter. If you've ever held a Thompson submachine gun, you can't just wave it around like it's a loaf of bread.

Now, obviously we would -- I understand the officer could very well contend that, no, it didn't look like a gun to me, but, you know, I'm not going to take any chances, and maybe it's some kind of homemade gun or something, who knows. But, again, that is a judgment that the jury is going to have to make.

I would argue that even if the gun was a real gun, the -- by the way, he fell into pieces when it hit the pavement, which may explain why nobody even bothered to photograph it for the file. When the submitted it to the district attorney for review there was no photograph of the gun. It was a statement that it was a gun, it a non-operating gun. Nobody said it was a toy.

By the way, if I could just -- if I could go off the record for 10 seconds.

(Whereupon, off-the-record colloquy was had.)

THE COURT: Don't go there.

MR. JONES: Okay. He was walking around -- I will go back on the record. My client was walking

around. He is mentally disabled. He has a -- the officer had encountered him in the past. He has an orange shower curtain on his head. He is waving a gun up in the air claiming that he's making a movie. I don't know if they are making a movie, Lawrence of Arabia or whatever, but it was an absolutely farcical story.

The officer was practically laughing when he approached him. They had a good-natured exchange, but Mr. Summerour, for whatever reason, refused to hand the gun to him. He turned to walk away from the officer. One officer shot. The other officer didn't.

That raised the question right there as to which officer was reasonable. Did the officer that didn't shoot act unreasonably? Should he have been disciplined? Was he negligent or was the officer who did shoot negligent?

The expert will say that, and any of these officers in this room may say that the officers are now trained on de-escalation techniques. They know how to deal with crazy people. They know how to deal with people who are non-compliant and that there were other ways to handle this situation.

If you see someone approaching and holding a

gun, approach them and cover. You crouch behind your car window. You (unintelligible). You don't walk up and try to shake the guy's hand and then shoot him.

We don't even know if he shot him on purpose. For all we know it was an accidental shooting. It happens all the time and it's human nature not to admit that you made a mistake, but rather to try to find some justification or defense for your conduct.

We haven't had a chance to ask the officer his view of what happened. All we know is what a video of another officer, who didn't see the need to shoot, saw.

And the reason why alternatives is important is because under the state's self-defense statute the plain word and plain common sense wording of it that the legislature came out with, you know, a hundred years ago before it was fashionable to sue police officers, it says that if -- and it applies to police officers. It also applies to you and me if we use deadly force.

It says that if the -- if you reasonably believe that it is necessary to use deadly force, that that is your only alternative, you can use deadly force, and that is a much broader standard than Federal

law.

Federal law doesn't say that you can only use deadly force if it's the last resort. Federal law says that there is a whole range, it's kind of like medical malpractice, a whole range of options and if the officer does something anywhere within that range that a reasonable officer would consider to be prudent, then -- and there is no clearly established law saying that you cannot do that, then that officer is entitled to qualified immunity under Federal law.

Now, state law is different. You are correct, your Honor, when you say that the immunity available to an individual officer under state law, it is a qualified form of immunity. It's not absolute immunity like sovereign immunity is with the City.

But, Ms. Brachstein did correctly clarify this, very tactfully I might add, because I think you just kind of went off on a tangent there, but there are some cases where very good judges have interchangeably used the terms official immunity and qualified immunity in the state law context and this gets into the whole issue of why the Federal decision doesn't collaterally stop you.

Under Federal law qualified immunity is

available to an officer if there is no prior case involving similar facts where an officer has been held to violate the Constitution, and so it's a purely legal standard, a purely objective standard.

Under state law if an officer -- an officer only has official immunity, one, if it's ministerial like you pointed out, which this isn't.

THE COURT: You use the term for sovereign immunity. You really meant qualified immunity.

MR. JONES: Yeah, I did. If I said that I misspoke. I'll get to sovereign immunity in a minute.

But official immunity there's two ways around it and one does not apply, because everyone would agree that --

THE COURT: Qualified immunity.

MR. JONES: Well, it's official. It is a qualified form of immunity as opposed to absolute, but state law calls it official immunity and it's not the same thing as qualified immunity under Federal law.

THE COURT: I want to use the terms sovereign immunity, which I think is official immunity, and qualified immunity that applies to the individual.

MR. JONES: Well, they are all governmental --

THE COURT: Because when they came out with the Coastal Georgia case which defined sovereign immunity, when in the past they had said that if there were an unlawful act committed, then the City or the County had waived sovereign immunity, and then they finally came out in Coastal Georgia said, no, we were wrong in all of that under the common law and all the way forward.

Sovereign immunity is pure and it is always going to be there, but the people still have a right to sue if they are going to sue an individual under qualified immunity, which comes into two grounds; the discretionary, as we have already talked about, and ministerial. You have first have to determine whether we are talking about a discretionary act of the officer or a ministerial act of an officer.

MR. JONES: Yes.

THE COURT: So first, are you contending it was discretionary or ministerial?

MR. JONES: I'm contending it was -- I'm admitting it was discretionary.

THE COURT: Discretionary.

MR. JONES: Because the use of force is discretionary.

THE COURT: She says you have to show malicious

intent.

MR. JONES: Exactly, and the Georgia Supreme Court said in Kidd v. Coates -- and there have been a lot of other cases. Some of my cases have applied that. Kidd v. Coates says that if you are acting in self-defense, you have no reasonable alternative but to take a life; then obviously you are acting in good faith, you are not acting with malice; however, if you are using more force than is reasonably necessary for defense of yourself or others, that is an intentional act, an intentional use of force, and it is not a -- it is not a justified act under the statute, but it is an intentional tort and if that is the case then the actual malice standard would apply and you would not be entitled to official immunity or what you are calling qualified immunity.

The Kidd v. Coates case they actually -- they set out that standard based upon the language of the self-defense statute. They actually found in favor of the officer in that case.

There was another case, I think Gardner v. Rogers, which I quoted, which is a later Court of Appeals case, applied the same standard on summary judgment. They held that the officer was not entitled to summary judgment.

I have had case Porter v. Massarelli is a case where they applied both Federal and state law of Georgia Court of Appeals. We got around the immunity on that basis.

But keep in mind these are all summary judgment decisions. You know, when you have got all the facts in, unless a plaintiff -- you know, under the well pleaded complaint rule, you know, you are kind bound at this stage by what the plaintiff alleges, because if -- I mean, if a plaintiff said, you know, he pointed the gun at somebody, he shot him, then obviously the pleadings themselves would defeat the claim, but in this case that is not the allegation.

THE COURT: The answer is not included in the pleadings?

MR. JONES: Well, it's -- it's certainly included, but if there's a dispute -- I mean, if something's admitted, then it -- I think it's certainly included, but the question is not does the answer state a claim, but does the --

THE COURT: No, but she says if her answers references the videotape as part of their whole case, is that included in the pleadings?

MR. JONES: Well, that's up to you, your Honor. It's not in the pleadings, but you are allowed to go

outside the pleadings and consider additional evidence.

THE COURT: Listen to me for just a second.

MR. JONES: Yes.

THE COURT: Her argument is that we included the videotape in our answer.

MR. JONES: Uh-huh (affirmative.)

THE COURT: That's part of the pleadings. It is not outside the pleadings. Judge, you don't have to go outside the pleadings because we contained the videotape in our answer, so you can view it as part of the answer, which in turn is part of the pleadings. So it doesn't convert to a summary judgment because it is a part of the pleadings. That is her argument.

MR. JONES: I think that may be her technical argument, but I think that under -- I think that under 9-11-12(c)once that happens the standard then changes to a summary judgment standard and then the question is --

THE COURT: Have you got a specific case on that?

MR. JONES: Well, there may be -- there are some in my brief. I don't have anything off hand.

But the other thing I would point out is once it

converts to summary judgment, under 9-11-56 it says that if the party opposing a motion submits an affidavit as to why discovery is necessary, which we did in this case, then the Court -- even if it converts it to summary judgment, the Court needs to allow reasonable discovery and reasonable opportunity to be heard on the summary judgment standard.

THE COURT: That is why I tried to pin you down on exactly what is reasonable discovery for a one-minute event. What is that going to entail?

MR. JONES: Well, a lot of --

THE COURT: What factual issues? Not all of this stuff about we want all the finances of the City, we want to know all of their bank records, we want to know how much money they have, you know, which you might do in a normal tort case to try to get your damages elements in.

MR. JONES: Yeah. It would just be on the underlying facts of the incident, but the standard, of course, under Georgia law is the six months and that is true whether --

THE COURT: I would not allow that. I want this thing heard and over with.

MR. JONES: Well, if this was a --

THE COURT: That is why I said show me a necessity for an extensive discovery and how you would need all of that time when I don't think there is that much to the case.

There might be -- there should have been a police review done. You might have a report from that police review. There should be the autopsy report we talked about. You claim you wanted some experts to dissect the videotape.

MR. JONES: I don't need to dissect the videotape because I have an expert.

THE COURT: Okay. Well, if you don't even need that --

MR. JONES: I don't. They might want to depose him, but the thing is my expert probably doesn't want to be deposed -- can't really be deposed until he has reviewed what other evidence is available; however, --

THE COURT: Well, that why I am asking for? I am asking --

MR. JONES: I mean, basically we would just have to depose the officers who were involved, perhaps depose the medical examiner with regard to bullet trajectory, something like that.

THE COURT: So you are talking about three

witnesses?

MR. JONES: Possibly four. We might have to do the D.A. or someone --

THE COURT: No, I would not allow something that was outside the scope of the actual event itself. I have already said I don't believe this is beyond the kin or knowledge of the jurors and trying to create somebody that is going to supplant the fact finder and start opining themselves as to what happened or didn't happen. On this specific instance it invades the province of the jury.

I could understand an expert who just simply wants to talk about police standards, what they have to do, all those kind of issues, but does not opine about this case. He just lays it out there and then everybody argues about whether the police officer met those standards or did not meet those standards.

I want to be real clear from day one that we are not going to get into this game of bringing people in -- and that is why I say the D.A. What would the D.A. add to anything? Well, why did you make your opinion? Why did you --

MR. JONES: Your Honor, I wouldn't ask for their opinion. But the reason I mentioned the D.A. or the G.B.I. is because there are inferences can be drawn

if information -- if certain information was concealed in an investigation because the person who concealed that information perceived that it might look bad for the officer, so, therefore, they conceal a certain fact, like the fact that the gun was not real or they didn't even provide a picture of the gun or the gun itself was not collected as evidence.

You know, someone could draw an inference from that that someone was trying to protect the officer and if that was the case it would authorize the inference that the officer acted improperly.

THE COURT: Let me stop you for a second. They didn't even grab the gun and put it into evidence, Mr. Rosenthal or --

MR. JONES: It's not on the G.B.I. file.

MR. ROSENTHAL: Your Honor, I do not know the answer to that. I do know that the G.B.I. investigated this --

THE COURT: I would be real shocked if that gun was not taken into evidence.

MR. JONES: I was shocked, your Honor, and that's the point. The D.A., the district attorney, who is now one of your colleagues on the Bench, wrote a memorandum summarizing the case that

mentions nowhere in it that this was not a real gun, I mean, just things like that.

And, again, I'm not saying it would necessarily be --

THE COURT: Keep on going.

MR. JONES: I'm sorry, your Honor. And let me say in terms of your concerns about judicial economy --

THE COURT: I don't care. Forget all of that.

MR. JONES: Well, let me talk about common sense. I could take both of these officers depositions tomorrow if they were available. The problem I'm having in scheduling things is that it takes two or three months to get all the lawyers and everybody lined up. I need to depose two officers --

THE COURT: You get the Court behind you and it doesn't take any time at all.

MR. JONES: Well, I'm happy to -- I'm happy to depose them --

THE COURT: Let's go on to your next argument.

MR. JONES: -- quickly. We could also have had discovery done in the amount of time that this motion has been pending.

Essentially what it is is the argument, the defense argument, and this is a common tactic in

these cases, file a motion to dismiss based on the law, saying that there is no facts to support the plaintiff's claim, and then file a motion to estop discovery so you can't find the facts in support of your claim.

There is one witness for the plaintiff and he's dead. You have got one officer that shot, another officer who didn't see the need to shoot. You've got a video that's capable of multiple interpretations.

Now, let me talk about something that I think you will agree with me on. There are two items of evidence that they have asked you to consider along with the pleadings and one in the motion. One is a video, which I talked about ad nauseam.

The other one is the insurance policy for the City of Monroe, and I will -- even though the insurance policy is not part of the pleadings, I do accept their argument that if the City has sovereign immunity, that is a jurisdictional defense and if they are trying to get the case dismissed or trying to get a judgment on the pleadings on the issue of sovereign immunity as a plea in abatement, then, yes, you can consider the insurance policy and whether that policy waives the City's sovereign

immunity.

And to me that is a separate issue, and it is an issue that the appellate courts are going to have to figure out. I don't think it's fair to dump it on you. But the appellate courts are frankly confused about this stuff.

She mentioned that Gatto case where -- Gatto vs. City of Statesboro. There were two series in that case to get around the City's sovereign immunity. One of them was that the City had insurance and under O.C.G.A. 36-33-1, if a city -- not a county, but if a city, if a municipality has insurance then that insurance waives the city's sovereign immunity to the extent of the coverage, and so you get into question if there was exclusions or things like that, does that waive the immunity or not.

The other issue, and this is the one that ultimately went up to the Supreme Court and the Supreme Court ultimately affirmed on, was whether the nuisance doctrine, the old common law nuisance doctrine, allows you to get around sovereign immunity.

The idea being if somebody had -- if there was a nuisance, if there was a giant hole, that pothole or something like that the City knew about and never

did anything about it, nuisance was traditionally an exception to sovereign immunity until sovereign immunity got added to the Constitution in the early '90s, which complicated the old law.

But in essence what happened, the Court of Appeals ruled against the plaintiff on both issues. They said that the insurance policy in that case, because it said in the policy itself this policy does not waive sovereign immunity, they said that that policy did not waive -- that there was immunity despite the policy, and then they also ruled on the nuisance claim that there was no nuisance in this case and therefore the City had sovereign immunity on both counts.

The Supreme Court granted SERT only on the nuisance part and certain lawyers, including myself, I wrote an amicus brief in the Georgia Supreme Court, knowing that I had this case and knowing that I have other cases against cities.

The only city I won't sue, your Honor, is Washington, Georgia because that's the city I live in. I won't sue that one, you know.

But the --

THE COURT: Well, would that not imply that the Supreme Court saw no problem with the Court of

Appeals analysis on the sovereign immunity, the exception in the insurance policy?

MR. JONES: It would imply that in that case that was the judgment they made, because there's a -- you know, there's a --

THE COURT: Would it not be true of any time it came up?

MR. JONES: Well, it's true. But generally the general rule if you sitting up there on your high horse at the Supreme Court is that you choose the narrowest basis possible to rule that's going to screw the least amount of people or cause the least amount of damage.

THE COURT: I don't know that I would adhere to that philosophy. I think they are always on the lookout for something they deem to be wrong.

MR. JONES: I think that's right --

THE COURT: -- and then --

MR. JONES: -- and that was the argument I made --

THE COURT: If they had thought that the Court of Appeals was wrong in their ruling that the exception in the insurance policy --

MR. JONES: Yes.

THE COURT: -- saved the City and allowed them

to use sovereign immunity, even though they had an insurance policy, if they thought that was wrong --

MR. JONES: Yes, and this --

THE COURT: -- it wouldn't it make that party asser, just as they did -- they obviously think there's a problem with the nuisance aspect of it.

MR. JONES: Yes, yes. Well, yes, and this is where you're getting -- I am going to get to the part that you're going to like, okay.

I agree that a reasonable -- that's a reasonable interpretation, and that whether the Supreme Court addressed that issue on the merits or simply failed to consider it all together, as a trial judge, you know, you're bound by the appellate decisions and what it means is that the Court of Appeals' decision stands on that issue. It was not touched, wasn't reviewed. It is the law of the land.

Now, the Court of Appeals in another case a few months later, and this is a case that I submitted to you and your law clerk with a notice of supplemental authority, this was a case called Atlantic Specialty Insurance vs. City of College Park.

In that case the Court of Appeals said the insurance company -- they made the same argument. It was a DEC action to say we don't have to pay

because the insurance police that we bilk the taxpayers of College Park into paying doesn't waive immunity, so therefore they don't have to -- they are not entitled to insurance coverage that they pay for and the Court of Appeals -- and that was in motor vehicle context, not the general municipal liability claim text.

In that context where there are other statutes that speak specifically to waiver immunity for motor vehicles, the Court of Appeals, a different panel of Court of Appeals says, well, this makes no sense, it would be crazy if you let parties to contract around waivers of immunity decided by the legislature. You know, it would be crazy to do that, and so in a different context.

They basically accepted the argument I'm making, but the problem is there is conflicting cases out there. You're bound by Gatto unless you're the kind of judge that wants to disagree with the appellate court and say I think this is wrong and this is why.

If you believe that you are bound by Gatto, my suggestion would be that you grant summary judgment on the sovereign immunity issue only, and the reason I say that is because under 9-11-56 any grant of summary judgment is directly appealable, even if

it's just a grant of partial summary judgment.

That can go on up to the Court of Appeals and potentially the Supreme Court, since they missed it the first time, in my opinion, and we ain't going to be trying these civil cases for at least a year anyway, you know, due to this whole COVID mess.

Let it go up on appeal on that issue on a direct appeal, and that appeal would not stop the rest of the case, because the case still goes on against the individual officer; the same lawyers, same insurance policy.

Even if the courts rule that this insurance doesn't waive immunity of the City because there is illusory language in it, you know, to circumvent the intent of the legislature, even if they hold that that insurance policy still covers the officer as an insurer. The insurance policy is still on the hook. All that that does is save the City itself from being named as a defendant.

So we could do limited discovery on the facts of the case. You could go through summary judgment. They could make the same fine arguments they are making today six months from now or whenever, and the only difference is you'll have the complete record to rule on and then maybe by the time this

case gets to trial we'll know whether the City is also a defendant or not.

And I would ask that you, for purposes of that claim only, that the sovereign immunity part of it and on the insurance policy that you rule on that as a matter of summary judgment, because it is directly appealable.

If you don't, if you simply grant a motion to dismiss or motion for judgment on the pleadings, it then becomes a discretionary appeal. I have to ask you for a certificate of immediate need and all that stuff and you have got to file a discretionary motion.

A direct appeal is a straight shot to an answer from the appellate courts, and if we lose, then it's a final deal, it's a done deal. You know, you have already got a final judgment on that issue.

So that would be my suggestion on how to handle it.

THE COURT: Don't you see what you are arguing though?

MR. JONES: What's that?

THE COURT: You are telling me, Judge, you can't rule on the pleadings, because you have to look at additional evidence that throws it out of the

pleadings into a summary judgment, and if you do that, well, by god, I have got six months. You can't have the summary judgment ruling until you allow us the discovery and everything.

But now you are just saying, well, Judge, why don't you just go ahead and rule on the summary judgment for the City and let's appeal that --

MR. JONES: Solely on the insurance waiver issue.

THE COURT: I would have to -- so you are saying, well, for that I wouldn't need any discovery purposes.

MR. JONES: That's correct, and the reason is that the only relevant evidence on that issue is the policy itself, because we did plead in our complaint that the policy waives sovereign immunity. At the time we pled that the Supreme Court had granted CERT on Gatto. We weren't sure how it was going to come out, but that was the position that we were arguing, but because we incorporated the insurance policy into the pleadings, and more importantly, as she points out, it's actually a motion for lack of jurisdiction as to that, because if there's sovereign immunity, then you don't have jurisdiction. You don't have to (unintelligible)

the jurisdiction if you consider the case against the City.

So if you approach it that way, we need discovery -- there is no additional discovery needed to determine whether the language of this insurance policy waives immunity as a matter of law or not. The policy is all you need for that.

Now, what you would normally do in that situation is they would file a DEC action. There are certain due process safeguards with DEC actions, like you name and you serve everybody who has an interest in the thing.

There are conflicting interests out the wazoo on this thing. You have got the City buying insurance that, you know, wants to be covered. You have got officers that may be -- if the City is not named in the suit, they know they have to be sued individually, which if the insurance -- if the City waives sovereign immunity, you would only have to sue the City. You wouldn't have to sue an officer. You wouldn't have to screw up his credit or make it hard to him to make his mortgage or something like that.

The City -- you have got an insurance company that's making premiums, selling policies, which they

then -- they then send the lawyers to come into court to say don't provide coverage and therefore there's immunity, and then those same lawyers are also representing the interests of the individuals who are going to get saddled with a lawsuit if the City, you know, falls out of it.

That would make sense if they just filed a DEC action and did it that way, but that is not how they chose to do it.

By the way -- and, again, I don't want to argue the merits of Gatto here. I argued it in my brief because I wrote the brief before the Supreme Court decision came out. But there is case law that says that an insurance policy that has a illusory coverage, that, you know, gives you coverage and then takes it away, that is a violation of public policy.

There is also cases where -- there's a case called Hyers v. City of Barlett where the Supreme Court said that -- I don't know if you're familiar with GIRMA. It's a Municipal Association of Georgia. They have their own Interlocal Risk Management Association, which is a self-insurance pool, all funded by taxpayer money.

The statute that created that as a form of

insurance says, oh, by the way, this doesn't waive sovereign immunity.

The Supreme Court of Georgia says the legislature cannot pass a statute providing for a waiver of immunity for insurance and then create a form of insurance and then say that it's not a waiver of sovereign immunity.

So what the Supreme Court said in one case and I was amicus counsel in that case, too. What they said in that case was that the legislature can't circumvent it's in the statutes by, you know, defining coverage in a way to get -- you know, to get around it, the legislative intent. Yeah, they are now saying in Gatto that a private insurance company can do that.

You know, you can say here's your insurance, insurance man, go tell the City they are protected against lawsuits and then as soon as you get sued the insurance company hires lawyers to go to court to say, well, you know, you are not covered because you are not liable. You are not liable because you are not covered, you know.

So, anyway, like I said, it's a mess, it's a mess. But I do think, and I'm trying to -- Judge, I'm not trying to be exclusively an advocate here.

I mean, I'm trying to be an officer of the court, because this is an area of the law that I've devoted my career to. I've represented police officers. I've sued police officers. Ninety percent of my practice is government liability. I've argued two of them in the U.S. Supreme Court.

What I feel, if I was your law clerk, or whoever you rely on for advice, I wouldn't be asking what do I think the ultimate outcome in this case ought to be. I would be asking myself what is the Court of Appeals going to say, and I think what the Court of Appeals is going to say is if you have got a motion to dismiss, you have got a motion for judgment on the pleadings, you can only rule on the pleadings.

I'm throwing the ball here. I'm saying in dealing with the Supreme Court's recent decision in Gatto, yeah, go ahead, look at the insurance policy, go ahead and rule against me on that, preferably by converting that part of the motion to summary judgment so it's directly appealable. But, you know, you don't have to. You can dismiss that part of it.

We clearly need discovery as to the underlying incident and I think a couple of months would do it. It's just that I don't have any control over the

other side's schedule and I have been trying to schedule depositions in other cases. You know, Federal court has a four-month discovery period and we almost always have to extend it before we can get everybody in the same room for a deposition.

But I can live with whatever you come up with on that. I just feel like you need -- we need to have an opportunity to question the officer, to get whatever other evidence is out there, put an expert on the record, and then have you review all this evidence, not under a pleading standard but under a summary judgment standard.

And, you know, again, the Federal court, they have got different rules. They've got different pleading requirements. There's substantive differences between negligence for improper -- in violation of the self-defense statute or battery in violation of the self-defense statute and a constitutional violation under the Fourth Amendment.

There's differences, substantive differences between the defenses available to defendants in state versus Federal law.

And most importantly of all, Judge Clay Land, who is a firm judge, expressly reserved the state law claims for you to rule on, and under the

supplemental jurisdiction statute, 28 USC Section 1367, if they were substantially the same as the Federal claims, he could have gone ahead and thrown them out in the bath water too. He could have ruled -- he could have granted -- he could have dismissed everything, but he didn't. He recognized, implicitly recognized, the differences between state and Federal law and he explicitly declined to even address it.

Instead the ball is in your court and somehow I have a feeling this case will end up decided not here, but in the Court of Appeals and we may or may not be looking at a jury in a couple of years.

So that's essentially our case, your Honor.

THE COURT: Thank you, Mr. Jones.

MR. JONES: Sorry I went over.

THE COURT: You're welcome. No problem. Ms. Brachstein, if you want to respond?

MS. BROCHSTEIN: Yes, your Honor, I'll keep it brief. I think essentially I would urge the Court to, when looking at this case, first consider can I look at the videotape and the insurance policy under 12(b)(c). We obviously argue one side or the other, but I think that's the first step.

If no, let's move to 12(b)1 and I would say that

both can be considered again as a motion to dismiss for a lack of subject matter jurisdiction.

If at that point the Court still finds that the videotape cannot be considered, we still have the collateral estoppel argument and we would turn the Court to the District Court's opinion to consider the issues, which plaintiff would have to show have already been precluded.

So that's sort of how I would recommend the Court look at this. I think once -- if the Court does consider the videotape, I think it's impossible to see it and think that reasonable minds could differ as to what it shows.

Ultimately that would be within your discretion and what you see, but it seems like a very obvious situation in my opinion.

The only other thing I wanted to touch on briefly, there was talk about whether the officer acted appropriately, discovery is needed on that and reasonable alternatives. That is not the standard. The standard for this state qualified official immunity is if he acted with actual malice, if he did not have a reasonable belief that his life was in danger.

I think you can discern that from the videotape.

Like you said, no expert can testify to that and I'm not sure how police standards would come into play for this official immunity argument, which needs to be decided before we ever get to the merits on the case.

Then finally plaintiff brought up that Atlantic Specialty case. We addressed it in our reply brief, but I just wanted to state, the Court even in that case distinguishes it from Gatto. It's very specific about an auto endorsement without going into the weeds, there are other statutes that play when there is a negligence claim involving a covered motor vehicle. It has no bearing on this case. I think we've heard that everyone is in agreement Gatto is the controlling law and would come down on our side.

So that was it for me. Thank you.

THE COURT: Okay. Mr. Jones, did you want a response to her response?

MR. JONES: No, I think I've said enough. I would just put your law clerk to work and read the briefs.

THE COURT: Why do you think it has to be my law clerk instead of me?

MR. JONES: Well, she's going to help you I

think. That's her job.

THE COURT: Appreciate that. Appreciate y'all and I will take it under advisement and try to get something out. I can't promise when. Thank y'all.

MR. JONES: May we be excused?

THE COURT: Y'all may be excused and we are going to be in recess.

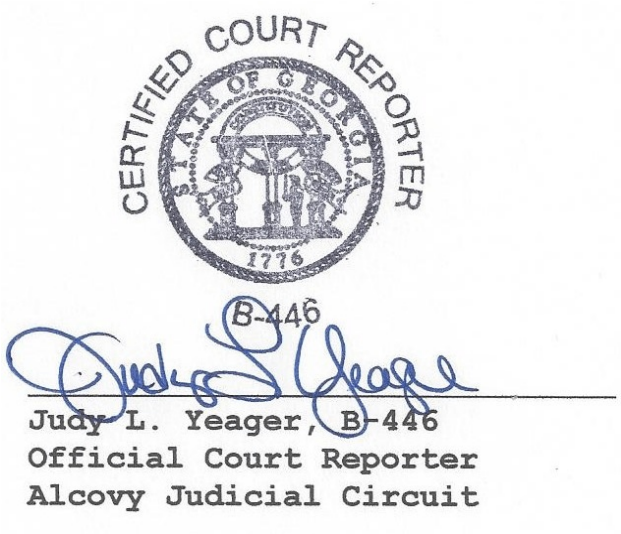
(Hearing concluded.)

C E R T I F I C A T E

I hereby certify that the foregoing proceedings were taken down, as stated in the caption, and were reduced to typewriting under my direction, and that the foregoing pages comprise a true, correct, and complete transcript of said proceedings.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

This the 24th day of April, 2021.



Judy L. Yeager, B-446
Official Court Reporter
Alcovy Judicial Circuit

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25